JD(ATL)–05–15
Jamaica, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

ISS FACILITY SERVICES, INC.

and **Case 29–CA–133335**

GWENETTE ADAMS, an Individual

and

LOCAL 210, INTERNATIONAL BROTHERHOOD OF TEAMSTERS
Party in Interest

LOCAL 210, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

and **Case 29–CB–134137**

GWENETTE ADAMS, an Individual

Mathew Jackson, Esq. and ***Noor I. Alam Esq***.,
for the General Counsel.
Andrew P. Marks, Esq., for the Company.
Andrew S. Hoffmann, Esq., for the Union.

DECISION

Statement of the Case

William Nelson Cates, Administrative Law Judge. This case was tried before me in Brooklyn, New York, on January 6, 2015. The charges initiating cases 29–CA–133335 and 29–CB–134137 were filed by Charging Party Gwenette Adams (Charging Party) on July 21,

and August 4, 2014[1], against ISS Facility Services, Inc. (the Company) and Local 210, International Brotherhood of Teamsters (Local 210), respectively, both charges were thereafter amended. After an investigation by counsel for General Counsel (government) of the National Labor Relations Board (Board), acting through its Regional Director for Region 29, issued an Order consolidating cases, consolidated complaint and notice of hearing (complaint) on October 16. The complaint alleges the Company, on or about December 18, 2013, granted recognition to Local 210, as the exclusive collective-bargaining representative, of its employees engaged in the function(s) of cleaning, maintenance, project and janitorial services at its John F. Kennedy International Airport in Jamaica, New York (JFK), terminal 2 even though the Local 210 did not represent a majority of the terminal 2 unit employees. It is alleged that on or about April 3 the Company and Local 210 mutually executed and have since maintained and enforced a collective-bargaining agreement, effective by its terms from March 2014 to February 28, 2017, and applicable to employees in the terminal 2 unit. It is also alleged the collective-bargaining agreement provides for a union-security clause for the employees in the terminal 2 unit. It is alleged that by engaging in the above conduct the Company and Local 210 have encouraged terminal 2 unit employees to join and assist Local 210. It is alleged that by letter dated July 8, Local 210, by its secretary-treasurer and principal officer, George Miranda (Local 210 Officer Miranda) threatened employees with loss of employment unless they executed dues check-off authorizations or otherwise joined or assisted Local 210 even though Local 210 was not the lawfully recognized exclusive collective-bargaining representative of the terminal 2 unit employees. It is alleged that on July 24, Local 210 Officer Miranda or Local 210 Business Agent Adrian Merced (Local 210 Business Agent Merced) at JFK Delta terminal 2 threatened employees with loss of employment unless they executed dues check-off authorizations or otherwise joined or assisted Local 210 and threatened employees with unspecified reprisals because employees filed charges with the Board. It is alleged Local 210 and the Company's actions violate Section 8(a)(1),(2), and (3) and Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act. (the Act).

The Company and Local 210, in their answers to the complaint, and at trial, deny having violated the Act in any manner alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. The parties entered into a written 15 paragraph (with certain subparagraphs) stipulations of fact which was received into the record as a joint exhibit, and, a stipulation regarding admissibility of nine specific documents, which documents were received into evidence as a joint exhibit. I carefully observed the demeanor of the witnesses as they testified and I rely on those observations here. I have studied the whole record, and, based on the detailed findings and analysis below, I conclude and find the Company and Local 210 violated the Act as indicated.

[1] All dates here are 2014 unless otherwise specified.

Findings of Fact

I. Jurisdiction, Labor Organization Status and Supervisory and/or Agency Status

The Company which is a corporation with a principal office and place of business located at 1019 Central Parkway North, San Antonia, Texas, has been, and continues to be, engaged in the business of providing facility maintenance and cleaning services to businesses, including businesses at JFK Airport in Jamaica, New York. In the past 12 months ending September 30, a representative period, the Company purchased and received at its JFK Airport facility goods and materials valued in excess of $50,000 from suppliers located outside the State of New York. The parties admit, and I find, the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties admit, and I find, Local 210 is a labor organization within the meaning of Section 2(5) of the Act.

The parties admit, and I find, that Company North American Vice President of Labor Relations Phillip Collins (Company Vice President Collins) has been, and continues to be, a supervisor and agent of the Company within the meaning of Section 2(11) and (13) of the Act. The parties also admit, and I find, that Local 210 Officer Miranda and Local 210 Business Agent Merced have been, and continue to be, agents of the Union within the meaning of 2(13) of the Act.

II. Alleged Unfair Practices

Facts

The facts set forth are from the parties stipulations of fact, stipulated exhibits, admissions and, as indicated, credited testimony.

The Company is a global corporation headquartered in Copenhagen, Denmark, and provides integrated facilities services - including security, landscaping, food service or catering, janitorial and engineering services - to a variety of clients across multiple industries. Under a contract with Delta Air Lines, Inc. (Delta), it currently provides cleaning and facility maintenance services to Delta at terminal 2 and terminal 4 of JFK Airport in Jamaica, New York. The Company's cleaning and facility maintenance employees at JFK are regularly assigned to work in either terminal 2 or terminal 4. The job performance of the Company's cleaning and facility maintenance employees at JFK is overseen by company supervisors who are regularly assigned to supervise employees in either terminal 2 or terminal 4. Company supervisors assigned to supervise employees in terminal 2 do not regularly supervise employees working in terminal 4, and, supervisors assigned to supervise employees in terminal 4 do not regularly supervise employees working in terminal 2. Above the level of direct supervisor, the Company's cleaning and facility maintenance employees at JFK terminal 2 and terminal 4 are jointly supervised by the Company's JFK facility manager.

On or about November 1, 2013, the Company assumed a contract to provide facility maintenance and cleaning services to Delta at JFK terminal 2. At the time the Company assumed the contract to provide facility maintenance and cleaning services to Delta at JFK, employees engaged in the function(s) of cleaning, maintenance, project and janitorial services at JFK terminal 2 (Terminal 2 Unit) were represented by Local 811, United Service Workers Union, IUJAT (Local 811). At the time the Company assumed the contract to provide facility maintenance and cleaning services to Delta at JFK, employees engaged in the function(s) of cleaning, maintenance, project and janitorial services at the portion of JFK terminal 4 operated by Delta (Terminal 4 Unit) were represented by Local 2l0, International Brotherhood of Teamsters. Local 210 has represented cleaning and facility maintenance employees at JFK terminal 4 since at least 2001.

On about November 11, 2013, the Company and Local 210 entered a Recognition Agreement by which the Company recognized Local 2l0 as the exclusive collective-bargaining representative of its employees in the Terminal 4 Unit. This recognition was supported by Local 210's showing it had obtained authorization cards signed by a majority of the 49 employees in the Terminal 4 Unit. Local 210 Business Agent Merced testified he presented approximately 40 signed authorization cards from employees of the Terminal 4 Unit.

On about November 14, 2013, Local 811 disclaimed its interest in representing employees in the Terminal 2 Unit. Local 811 notified the Company in writing of its disclaimer of interest and posted notices to employees to that effect inside the workplace at JFK terminal 2. Local 811 President Richard Kolb's letter to the Company states:

> I write on behalf of Local 811, United Service Workers Union, International Union of Journeymen and Allied Trades (hereinafter referred to as "Local 811"). Please be advised that as of November 15, 2013, Local 811 shall no longer act in furtherance of its recognition as the bargaining representative for any employees employed by ISS Facility Service at the airports operated by the Port Authority of New York and New Jersey. Please be further advised that as of November 15, 2013, Local 811 abandons its representative status and disclaims interest in the aforementioned employees. Should you have any further questions, please contact the undersigned.

On about December 18, 2013, the Company and Local 210 entered a Recognition Agreement by which the Company recognized Local 2I0 as the exclusive collective-bargaining representative of its employees engaged in the function(s) of cleaning, maintenance, project and janitorial services at JFK terminal 2 and the portion of JFK terminal 4 operated by Delta (Combined Unit). This recognition was supported by the Union's showing that it had obtained authorization cards signed by a majority of employees in the Combined Unit. There were 40 employees assigned to terminal 2 and 49 employees assigned to Terminal 4 at that time for a total of 89 Combined Unit employees. Local 210 Business Agent Merced testified he and International Union Representative Cynthia Rivera visited with Terminal 2 Unit employees in approximately November 2013 to try to organize the employees. According to Merced he and Rivera were able to obtain approximately four signed authorization cards from the Terminal 2 Unit employees. Local 210, in support of its majority status to the Company in the Combined

Unit, demonstrated it represented 49 (all) unit employees at terminal 4 combined with 4 terminal 2 employees for a total of 53 of the 89 Combined Unit employees.

At the time the Union and the Company entered the Recognition Agreement on about December 18, 2013, Local 210 had not demonstrated to the Company that it had obtained signed authorization cards from a majority of employees in the Terminal 2 Unit and had not otherwise demonstrated that it enjoyed the support of a majority of employees in the Terminal 2 Unit.

On December 23, 2013, Local 811 filed a representation election petition with Region 29 of the Board (Region 29) in Case 29–RC–119522, seeking an election among all "full-time and regular part-time cleaners, window cleaners, project workers and lead persons employed by [the Company]" at JFK Terminal 2. Local 210 joined the proceedings in Case 29–CA–119522 as an intervenor. On January I0, the Regional Director for Region 29 approved a Stipulated Election Agreement in Case 29–RC–l19522, mutually executed by the Company, Local 210 and Local 811 on January 9. The parties to the aforementioned Stipulated Election Agreement agreed that a bargaining unit comprised of all "full-time and regular part-time building cleaners, employed by the [Company]" at JFK Delta terminals 2 and 4 was an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

In accordance with the terms of the Stipulated Election Agreement in Case 29–RC–119522, the Company posted copies of a notice of election inside wall-mounted glass containers near the employee timeclocks at the Company facilities in JFK Delta terminals 2 and 4, and above the time clock at terminal 2. The notices of election remained posted at the Company's facilities at JFK during the period January 23– 27. On about January 28, the Regional Director for Region 29 issued an Order granting Local 811's request to withdraw its petition in Case 29–RC–1 19522 and cancelling the election scheduled in that case.

Local 210 and the Company executed a collective-bargaining agreement covering employees in the Combined Unit on April 1 3, respectively. This collective-bargaining agreement was made effective from March 1 through February 28, 2017. The collective-bargaining agreement in subparagraph 10(b) provides:

> It shall be a condition of employment that all Employees of the Company covered by this agreement, who are members of the Union in good standing on the effective date of this agreement, shall remain members in good standing or pay all periodic dues, initiation fees and assessments as required by the Union and those who are not members on the effective date of this agreement or execution thereof, whichever is later, shall become and remain members in good standing in the Union or shall pay initiation fees and periodic dues and assessments as required by the Union.
>
> It shall also be a condition of employment that all employees covered by this agreement and hired on or after its effective date or execution thereof whichever is later, shall on or after the thirty-first (31st) day following the beginning of such employment become and remain members in good standing in the Union or pay initiation fees and periodic dues and assessments as required by the Union. An

> employee who has failed to acquire, or thereafter maintain, membership in the Union as herein provided, or to pay initiation fees or periodic dues shall be terminated seventy two (72) hours after the Company has received written notice from an authorized representative of the Union, certifying that membership has been, and is continuing to be, offered to such employee on the same basis as all other members and, further, that the employee has had notice and opportunity to make all dues and initiation fee payments.

Charging Party Adams has worked as a cleaning employee at JFK since 2008, cleaning gate areas, restrooms and security checkpoint areas. She works the morning shift at terminal 2 from 5:30 a.m. until 2 p.m. daily except Thursdays and Fridays. Adams testified she has never been assigned by the Company to work at terminal 4. According to Adams, there are 17 other cleaning employees on her terminal 2 morning shift and she has never seen any cleaning employees working her shift she did not recognize as regularly assigned terminal 2 employees. Adams, on direct examination, testified she never came in contact with terminal 4 employees, nor, seen terminal 4 employees in the terminal 2 locker room. On direct examination Adams stated, more than once, she never heard about cleaning employees from the afternoon or evening shifts at Terminal 4 being sent to terminal 2 to perform cleaning work. Adams; however, was asked on cross-examination, to explain why her August 11, pretrial affidavit reflected "I have heard about Terminal Four employees from the afternoon shift or from the evening shift being sent to Terminal Two to do work." On redirect examination, Adams testified she never worked an afternoon or evening shift and had never heard, or seen, a fellow worker from terminal 4 sent by the Company to perform cleaning work at terminal 2.

Charging Party Adams impressed me she was making every effort at trial to testify truthfully not withstanding the somewhat contradictory statement in her pretrial affidavit concerning whether she heard about terminal 4 employees being sent to terminal 2 to perform cleaning work on the afternoon or evening shifts. Adams, at trial, explained she never worked the afternoon or evening shifts and never heard about, nor saw, fellow workers from terminal 4, sent by the Company, to perform cleaning work at terminal 2. I am persuaded any anxiety or uneasiness exhibited while testifying was as a result of having to testify and not an indication she was testifying untruthfully.

Cleaning employee Migdalia Rivera testified she works at terminal 2 on the morning shift but had previously worked at terminal 3 until it was closed. She said that after the Company came in; she, and approximately 40 other cleaning employees, were assigned to terminal 2. Rivera knew some, but not all, employees assigned to terminal 2 saying some terminal 2 employees were new. Rivera testified she never observed anyone at terminal 2 who did not normally work there, and, could not recall seeing any employees from terminal 4 working at terminal 2, nor, had she seen any employees from terminal 4 coming to terminal 2. Rivera knew of one terminal 2 employee "Joquine" being sent to terminal 4 to work some overtime after working his terminal 2 shift.

Rivera recalled the Company took over terminal 2 and 4 cleaning work on November 1, 2013, and the employees were told that fact in a joint meeting of terminal 2 and 4 employees attended by various company managers. Rivera first heard Local 210 was representing

employees of terminal 2, but, only met a representative from Local 210, George Hernandez, in January.

Rivera, along with cleaning employee Ana Aragon, met with Local 210 Business Agent Merced on July 24 in the area of the cafeteria on the first floor in terminal 2. Rivera testified the first thing Merced said was that someone in the group was putting out wrong information and then stated "the Company, ISS, is gonna fire people that do not sign in for 210." Aragon asked Merced why the employees were going to get 3 weeks of vacation after 10 years employment, to which, Rivera testified, Merced responded "People like you is the one that gives out wrong information." Rivera testified Merced made mention of someone in the group going to the "Labor Board," and that was "unlegal [illegal]." Rivera testified neither she, nor Aragon, responded to Merced and decided to go back to work leaving Merced by himself.

Terminal 2 cleaning employee Ana Aragon testified she commenced working at JFK in 2010 and ended her employment with the Company on September 18. Aragon testified that sometime before July 8 she, and others, met with Local 210 Business Agent Merced at lunchtime at the Company's first floor office at terminal 2. Aragon stated, "Joquine", "Migdalia [Rivera]" and "Joe", fellow employees, were present. Aragon could not recall who started the conversation with Merced, but, testified Merced said we had a union, Local 210. According to Aragon, Merced said, "That we have to sign papers because we had a new Union and we have to sign the papers . . . because they needed to . . . take the money from the checks for the Union." Aragon asked Merced, "How do we know that we have a Union if we do not vote for one?" Merced told them he was not going to repeat what was said at the first meeting but responded how Local 210 became their representative as "the Union we had before, the 811, he sold the company to the 210." Aragon testified, "They were upset because we were asking questions why. He said that we have to sign; otherwise, we were going to get fired, the ones who were not going to sign." Aragon never signed anything for Local 210.

Aragon testified she and "Migdalia [Rivera]" had a second meeting with Local 210 Business Agent Merced in the lunchroom at terminal 2. Aragon testified Merced told them "We have to sign so they could collect—so they could take the money for us." Aragon made some response to which Merced said, "That if we did not sign they were going to fire one-by-one, we were going to receive a letter, and that letter we had to sign and then we had to send it back." Aragon said "Migdalia [Rivera]" became upset and left and she followed her.

Charging Party Adams, on or about July 8, received a letter from Local 210 Union Officer Miranda advising her employment with the Company was covered by a collective-bargaining agreement between the Company and Local 210. Adams was advised she was required to pay monthly membership dues to Local 210, as set forth in the collective-bargaining agreement, as a condition of her employment. Adams was also advised if she refrained from membership in Local 210 she would still be required to pay an equivalent amount as a monthly fee to Local 210 for its service in representing her interests with the Company. Adams was informed that despite Local 210's numerous communications to her, she had failed to pay the dues she owed Local 210 including dues for the month of July. Adams was informed if she continued to refuse to pay her delinquent dues by July 18; Local 210 would notify the

Company and request her employment with the Company be terminated, as provided for in the collective-bargaining agreement.

Terminal 2 cleaning employee Aragon also received Miranda's July 8 letter.

II. Analysis, Discussion and Conclusions

A. The 10(b) Issue/Defense

Section 10(b) of the Act specifically provides "no complaint shall be issued based upon any unfair labor practice occurring more than 6 months prior to filing of the charge with the Board." In *Dedicated Services,* 352 NLRB 753, 759 (2008), further guidance is provided:

> However, it is well established that the 10(b) period does not begin to run until the Charging Party has received "clear and unequivocal notice, either actual or constructive" of the violation. *Broadway Volkswagen,* 342 NLRB 1244, 1246 (2004); *St. Barnabas Medical Center,* 343 NLRB 1125, 1126 (2004); *Leach Corp.,* 312 NLRB 990, 991 (1993), enfd. 54 F.3d 802 (D.C. Cir. (1995); *Amcar Division*, 234 NLRB 1063 (1978), enfd. 596 F.2d 1344, 1351 (8th Cir. 1979). The burden of showing such clear and unequivocal notice is on the party raising Section 10(b) as an affirmative defense. *Broadway Volkswagen*, supra at 1246; *Chinese American Planning Counsel,* 307 NLRB 410 (1992), review denied mem. 990 F.2d 624 (2d Cir. 1993).

Constructive notice will include, as applicable, circumstances where the charging party could, with "reasonable diligence," have discovered the alleged misconduct. However, an unfair labor practice charge will not be time-barred if the delay is brought about by ambiguous conduct, or conflicting signals by the other party(ies). *My Public Transportation,* 356 NLRB No. 116 slip op. at 13 (2011).

The Company, on December 18, 2013, recognized Local 210 as the exclusive collective-bargaining representative of all JFK Delta Terminal 2 Unit and Terminal 4 Unit employees. The Company points out the charge against it alleging the recognition as unlawful was not filed by Charging Party Adams until July 21, and not served on the Company until July 24, dates more than 6 months after the recognition was granted. The Company contends that because more than 6 months elapsed between the alleged unfair labor practice and service of the unfair labor practice charge, the charge is untimely and must be dismissed. In this regard the Company contends Charging Party Adams had knowledge, either actual or constructive, the recognition had been granted on December 18, 2013, more than 6 months before she filed her unfair labor practice charge.

Local 210 contends the charge filed against it by Charging Party Adams on August 4, and served on August 6, is untimely under Section 10(b) because the filing came some 7–1/2 months after the Company's voluntary recognition of the Union on December 18, 2013, had taken place. Local 210 contends the relevant 10(b) period would extend back to February 6, and contends Charging Party Adams had actual notice of the Company's recognition of Local

210 to represent the JFK Delta Terminal 2 Unit and Terminal 4 Unit employees in January 2014, thus; outside the 10(b) period and the charge against Local 210 must likewise be dismissed.

The first unfair labor practice allegation in the complaint against Local 210 concerns Local 210 and the Company mutually executing, maintaining and enforcing a collective bargaining that is effective from March 1, 2014 to February 28, 2017. Local 210 acknowledges the date of the allegation is within 6 months prior to the filing of the charge but, contends this and the other unfair labor practice allegations against Local 210 flow from the purportedly unlawful recognition on December 18, 2013, and, are thus subsumed in the analysis concerning the propriety of the voluntary recognition.

Local 210 Organizer Cynthia Rivera testified she was at JFK on January 2, 9, 13, 14 and 17. Rivera testified she was at JFK Delta terminal 2 "to speak with the workers about Local 210." Rivera said she always introduced herself so she could get to know the employees and the employees could get to know her face. Rivera testified:

> I tell them, you know, about Local 210, where it's located—all the questions—answer any questions that they may have; and just give them information in general about—we're representing for; you know, welcome to Local 210; this is going to be your representative; here's my card, my phone number; any questions, call me.

Rivera testified cleaning employees Ana Aragon, and a couple others, Veronica White and Felalina Chung, asked her how Local 210 had become the collective-bargaining representative at JFK Delta terminal 2. According to Rivera, Charging Party Adams was present on at least two or three occasions but was "rather quite" when she was present. Rivera said about 10 to 12 employees were in a semicircle when she met with and spoke to the employees. Rivera said she told the employees the Company had recognized Local 210 for both terminals which were one unit and they were now members of Local 210. Rivera said she explained the recognition facts each time she spoke "if that was the question." Rivera spoke English explaining these circumstances when Charging Party Adams was present. Rivera, however, never spoke individually with Adams.

Local 210 Business Agent Merced testified he visited JFK on January 6, 7, and 31. Merced met with JFK Delta Terminal 2 Unit employees "when there's a switch in shifts" so as to "catch the morning shift leaving and the afternoon shift coming in." He observed Charging Party Adams two times in groups of, "I would say two hand-fulls; maybe 10—11," with Adams "maybe four feet" away facing toward him as he spoke English. Merced never spoke personally with Adams only "in group-wise." Merced explained "who Local 210" was and the reason why they were their representative. Merced explained he gave the employees "a brief history of actually who [Local] 210 really is, which was—came from [Local] 815 and became Local 210." Merced said he explained the Company had merged the two units together with common management into one unit so "the operations could run smoother" with the combined workers.

Merced testified he told the employees how Local 210 became their collective-bargaining representative:

> I explained to them that we had Terminal Four -- all of Terminal Four that were ABM workers that came from Local 811 and signed up with us; and on top of that, I explained to them again regarding the merger with Terminals Two and Terminals Four and that the majority of combined Units was the greater, and the Company going forward and recognizing Local 210.

Charging Party Adams testified that when she first started working at JFK as a cleaning employee she worked at terminal 3. The union representing the unit was Local 811. Local 811 continued to represent that unit of employees when she and the others were transferred to cleaning work in the JFK Delta terminal 2. Adams was happy with Local 811's representation stating, "because they used to fight for us; they used to do things for us." Adams was thereafter told by a fellow worker "811 is no more represent the Union; so no more represent the Union. That we don't have no more Union for [Local] 811." Adams testified the very first time she heard of Local 210 was in March 2014:

> When I heard about the Local 210 is when we was in the locker room, and my—so I went in the locker room and I see their poster post up there. I had to go in the door. It was there. I don't want Local 210; so I read it, and I go and change my clothes.

Adams explained that when she saw the Local 210 poster she did not know anything about 210; adding, Local 210 "didn't do nothing for us."

Adams testified she saw Local 210 Business Agent Merced once in the lunchroom at JFK Delta terminal 2 but could not recall if it was before or after she saw the Local 210 poster in March. Adams testified she did not speak to or argue with Merced but she saw employee "Veronica" and other employees talking with him and stated, "I[t] was not me speaking to him. Veronica and other workers was speaking. I was going 'round to the locker room, and I saw he and Veronica and the rest of the workers in there." Adams could not recall the month this took place but knew it was in 2014. Counsel for Local 210 pointed to Union Organizer Cynthia Rivera sitting in the courtroom at trial, and Charging Party Adams testified; "I don't know her. I never seen her. I don't know her." When specifically asked if she had seen Union Organizer Rivera anywhere before the courtroom identification Adams responded, "No, sir; I never see her before."

Charging Party Adams, in response to questions on cross-examination, regarding, in part, the charges and amended charges she filed with Board she responded as follows:

> Q. Okay. Do you have any knowledge of anything that happened in January 2014, that constituted a recognition of ISS of Local 210?
> A. By recognize?

Q. You're complaining, are you not, that ISS improperly recognized Local 210 as the representative of employees who were working in Terminal Two; correct?
A. Terminal Two.
Q. That's your assertion; isn't it?
A. Yes.
Q. And that happened in December of 2013; didn't it?
A. 2013?
Q. Yes. In December, 2013, ISS entered a Recognition Agreement, that's stipulated, with Local 210. That's a stipulated fact. You are aware of that; correct?
A. Yes, sir I'm aware of it.
Q. You were aware of it?
A. I'm aware of it.

Cleaning employee Migdalia Rivera testified she learned in November 2013 that Local 811 did not want to represent her unit of employees. Rivera first testified she did not, in mid-December 2013, know Local 210 was their new union. Rivera explained she was not assigned to work on the days the Local 210 representatives visited JFK Terminal 2 Unit employees but acknowledged "Veronica" and other employees told her about the visits. Migdalia Rivera testified her coworkers told her that Local 210 Business Agent Merced told them in December 2013 that he was going to be representing them but she did not remember if they said Merced told them the Company had recognized Local 210 to represent the JFK Delta Terminal 2 Unit employees. After reviewing her pretrial affidavit given to the Board, Rivera recalled:

Q. Didn't you learn from your co-workers, in December of 2013, that you and your co-workers were being represented by Local 210?
A. Yes.
Q. Which co-workers told you that?
A. The same people I mentioned earlier.
Q. How many people told you that?
A. About four, five, ten people. I mentioned that.
Q. Would it be fair to say that when you got back to work from your days off, --
A. Yes?
Q. -- that it was common knowledge among the morning shift at Terminal Two that Local Terminal Two had been there and had told everybody that they were now representing the group?
A. That's what I – that's what I thought.
Q. Was it common knowledge among all your co-workers?
A. Among them; yes.

It is clear the complaint allegations at issue here have their origin, or flow from; when Charging Party Adams had notice the Company had granted Local 210 recognition as bargaining representative.

In that regard, did the Company or Local 210 meet their burden of showing Charging Party Adams had "clear and unequivocal notice, either actual or constructive" that the Company granted Local 210 recognition for the JFK Delta Terminal 2 Unit employees prior to January 24? The evidence fails to establish Adams had notice prior to January 24.

First I turn to whether Charging Party Adams had "actual" notice prior to January 24. In addressing "actual" notice it is necessary to comment on credibility issues that are presented. I have addressed, in part, Adams credibility elsewhere in this decision, but, it is helpful to make an observation or so here as well. Adams may well not have been a polished witness who testified in an effortless manner, form or style, but, nonetheless, as I watched her testify, I concluded she was attempting to testify truthfully. She did not always remember events fully or specific dates but the over-all tenor of her testimony convinced me of its reliability.

The Company's and Local 210's contention Charging Party Adams admitted she knew, that in December 2013, Local 210 had been recognized by the Company as the bargaining representative for the Terminal 2 Unit employees has not been clearly demonstrated. It is unclear from counsel's questioning of Adams whether she was being asked if she knew of the 2013 recognition, or; if she knew it was a stipulated fact the Company entered a recognition agreement, in December 2013, with Local 210. The confusion brought to the questioning by counsel precludes any conclusion Adams admitted knowing of the recognition in 2013.

Charging Party Adams acknowledged seeing Local 210 Business Agent Merced once in the lunchroom at JFK Delta Terminal 2 but could not recall if it was before or after she saw the Local 210 poster in March. Even if her seeing Merced took place before March, Adams did not speak to Merced but, rather, simply went around those speaking with Merced as she walked to the locker room. Such does not establish she learned of the recognition at that time.

Even on these occasions that Local 210 Business Agent Merced testified about Adams being present at some of his January meetings with Terminal 2 Unit employees, he acknowledged she remained quit. I credit Adams testimony that the first time she was actually aware the Company had granted recognition to Local 210 for the Terminal 2 Unit employees was in March. I am persuaded there is no credible testimony by either Merced or Organizer Rivera that would require a different conclusion.

I am likewise unable, on this record, to conclude a clear and unequivocal showing has been established that Charging Party Adams had "constructive" notice, before January 24, the Company had, on December 18, 2013, recognized Local 210 as the bargaining representative for the JFK Delta Terminal 2 Unit employees.

The Company and Local 210 essentially rely on the testimony of cleaning employee Migdalia Rivera that she learned from somewhere between 4 to 10 co-workers, in December 2013, that Terminal 2 Unit employees were being represented by Local 210. There is no showing that the four to ten unit employees conveyed to Charging Party Adams their understanding that in December 2013 the employees were at that time represented by Local 210. With that lack of knowledge, I am unpersuaded Adams would have been obligated by "reasonable diligence" to seek or find out if anyone represented the Terminal 2 Unit

employees. The fact 4 to 10 employees in a unit of 40 employees considered their knowledge to be common among all the unit employees is a leap I am unwilling to make. I find the Company and Local 210 failed to satisfy the burden of establishing constructive notice attributable to Charging Party Adams before January 24.

Assuming, arguendo, Charging Party Adams had knowledge, before January 24, of the Company's December 18, 2013 recognition of Local 210 as the bargaining representative for the JFK Delta Terminal 2 Unit employees, Adams' charge would not be time-barred. The Company and Local 210 gave conflicting signals and engaged in ambiguous conduct that prevented any clear and unequivocal prior notice of recognition. Specifically after the Company granted Local 210 recognition on December 18, 2013 it, as well as Local 210, engaged in the following conduct or was aware of actions by Local 811: (1) On December 23, 2013, Local 811 filed a representation election petition in Case 29–RC–119522 seeking an election among all "full-time and regular part-time cleaners, window cleaners, project workers and lead persons employed by [ISS]" at JFK Terminal 2; (2) Local 210 joined the proceedings in Case 29–CA–119522 as an intervenor; 3) On January 10, the Regional Director for Region 29 of the Board approved a Stipulated Election Agreement in Case 29–RC–119522 signed by the Company, Local 210 and Local 811 on January 9; (4) The parties in the approved Stipulated Election Agreement agreed that a bargaining unit comprised of all full-time and regular part-time building cleaners employed by the Company at JFK Delta terminals 2 and 4 was an appropriate unit within the meaning of the Act; (5) The Company, in keeping with the terms of the Stipulated Election Agreement in Case 29–RC–119522, posted copies of an notice of election inside wall-mounted glass containers near the employee time clocks at the Company JFK Delta terminals 2 and 4, and, above the timeclock at JFK Delta terminal 2 and the notices remained posted from January 23– 27; and, (6) On January 28, the Regional Director for Region 29 issued an Order granting Local 811's request to withdraw its petition in Case 29–RC–119522 and cancelling the scheduled election.

These actions by the Company and Local 210 prevented any clear and unequivocal notice of recognition they may have previously entered into. The above actions, by the Company and Local 210, specifically conflicted with whatever statements about recognition Local 210 Union Organizer Rivera and Business Agent Merced made to employees concerning the Company's grant of recognition to Local 210 even if the statements had been made to Charging Party Adams. Whether Adams was fully aware of the Parties conflicting and/or ambiguous actions is not controlling.

Based on all the above, dismissal of the case here pursuant to Section 10(b) is denied.

B. The Issue of an Accretion.

The Board recently, succinctly, restated in *NV Energy, Inc*., 362 NLRB No. 5 (2015), its long standing precedent for addressing an issue of accretion. The Board in *NV Energy* stated:

> When the Board finds an accretion, it adds employees to an existing bargaining unit without conducting a representation election. The purpose of the accretion doctrine is to "preserve industrial stability by allowing adjustments in bargaining

> units to conform to new industrial conditions without requiring an adversary election every time new jobs are created or other alterations in industrial routine are made." *NLRB v. Stevens Ford, Inc.*, 773 F.2d 468, 473 (2d Cir. 1985), quoted in *Frontier Telephone of Rochester,* supra at 1271. However, because accreted employees are added to the existing unit without an election or other demonstration of majority support, the accretion doctrine's goal of promoting industrial stability is in tension with employees' Section 7 right to freely choose a bargaining representative. *Frontier Telephone of Rochester,* supra at 1271. The Board accordingly follows a restrictive policy in applying the accretion doctrine. See *CHS, Inc.,* 355 NLRB 914, 916 (2010) (quoting *Archer Daniels Midland Co.,* 333 NLRB 673, 675 (2001)); *Super Value Stores,* 283 NLRB 134, 136 (1987). Under the well-established accretion standard set forth in *Safeway Stores, Inc.,* 256 NLRB 918, 918 (1981), the Board finds "a valid accretion only when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted." Id. (footnotes omitted). See also *Frontier Telephone of Rochester,* supra at 1271; *E. I. Du Pont,* supra at 608 (quoting *Ready Mix USA, Inc.,* 340 NLRB 946, 954 (2003)). In determining whether this standard has been met, the Board considers factors including integration of operations, centralization of management and administration control, geographic proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history, degree of separate daily supervision, and degree of employee interchange. *Archer Daniels Midland,* supra at 675 (citing *Progressive Service Die Co.,* 323 NLRB 183 (1997)). However, the Board has held that the "two most important factors—indeed, the two factors that have been identified as critical to an accretion finding—are employee interchange and common day-to-day supervision," and therefore "the absence of these two factors will ordinarily defeat a claim of lawful accretion." *Frontier Telephone of Rochester,* supra at 1271 and fn. 7 (internal quotations omitted). [footnotes omitted].

In addressing whether accretion is appropriate I note the Board readily recognizes that in the usual case a variety of elements are presented, some militating toward and some against accretion making a balancing of the various factors necessary. See *Great Atlantic & Pacific Tea Co*., 140 NLRB 1011, 1021 (1963). Balancing the various factors; however, may not serve, or provide, an opportunity to bypass the two critical factors of employee interchange and common day-to-day supervision of employees while addressing accretion issues.

Did the Company, on December 18, 2013, grant recognition to Local 210, as the exclusive collective-bargaining representative of its employees engaged in the function(s) of cleaning maintenance, project and janitorial services at JFK Airport for its terminal 2 employees even though the Union did not represent a majority of the Terminal 2 Unit employees? The simple answer is yes, the Company did. At the time of granting the recognition Local 210 had not demonstrated to the Company it had obtained signed authorization cards from a majority of employees in the Terminal 2 Unit, nor, otherwise demonstrated it enjoyed the support of a majority of employees in the Terminal 2 Unit, which

40 Unit employees, had previously been represented by Local 811 (United Service Workers Union IVJAT). Local 210 only obtained four signed authorization cards from the 40 Terminal 2 Unit employees.

The Company's granting of recognition to Local 210 on December 18, 2013, was for a combined unit composed of Terminal 2 and Terminal 4 employees. Local 210 had, since at least 2001, represented employees in the Terminal 4 Unit. Local 210 did demonstrate support among employees in the Combined Unit. Local 210 presented the Company signed authorization cards from 40 of the 49 Terminal 4 Unit employees along with 4 signed authorization cards from Terminal 2 Unit employees. Thus Local 210 claimed support of the 49 Terminal 4 employees plus 4 Terminal 2 Unit employees, who signed union authorization cards, for a total of 53 of the 89 Combined Unit employees. I note the actual support among the Terminal 4 Unit employees was 40, and from the Terminal 2 Unit employees only 4, totaling 44 authorization cards from the Combined Unit of 89; less than a majority.

It is essential to note that what the Company and Local 210 are attempting here is an accretion of the Terminal 2 Unit employees into the Terminal 4 Unit employees. Stated differently, the only way the Company, and Local 210, can justify the granting of recognition by the Company to Local 210 to represent the Terminal 2 Unit employees is by an accretion of the Terminal 2 Unit employees into the Terminal 4 Unit. The Company and Local 210 refer to, and contend; the situation here resulted from the Company's integrating its terminal 2 and terminal 4 operations or merged its terminal 2 and 4 operations. Regardless of how it is characterized (integrating and/or a merging of its operations) the only way the granting of recognition can withstand scrutiny is if the parties actions constituted a valid accretion of the Terminal 2 and Terminal 4 Unit employees into one Combined Unit.

As noted elsewhere here, when the Board finds an accretion, it adds employees to an existing bargaining unit without conducting a representation election. The purpose of the accretion doctrine is to preserve industrial stability by allowing adjustments in bargaining units to conform to new industrial conditions without requiring an adversary election every time new jobs are created or other alterations are made. In an accretion employees are added to an existing unit without an election without a demonstration of majority status thus promoting industrial peace, but, such action runs head-on into employees' Section 7 right to freely choose their own bargaining representative. Understandably, the Board follows a restrictively narrow policy when it applies its accretion doctrine. Again, as noted elsewhere here, the Board will only find a valid accretion when the additional employees have little or no separate group identity and not an appropriate unit; and, when the additional employees share an overwhelming community of interest with the preexisting unit to which they will be accreted.

In determining whether an accretion is appropriate the Board requires that I consider, among other factors, at least some of the following: (1) integration of operations; (2) centralization of management and administrative control; (3) geographic proximity; (4) similarity of working conditions, skills and functions; (5) common control of labor relations;(6) collective-bargaining history; (7) degree of separate daily supervision; and, (8) degree of employee interchange. The Board directs in my consideration, that two factors are critical to

finding an accretion, namely, employee interchange and common day-to-day supervision. The absence of these two critical factors will ordinarily defeat a claim of a lawful or valid accretion.

I address the two critical factors first. The parties stipulated company employees engaged in cleaning, maintenance, project and janitorial services at JFK Delta terminals 2 and 4 are regularly assigned to work *either* in Terminal 2 or Terminal 4. Record testimony, at best, only demonstrates extremely minimal, if any, interchange of employees between terminals 2 and 4. Charging Part Adams', a terminal 2 cleaning employee, credibly testified she has never been assigned to work at terminal 4. No contrary evidence was offered. Adams knew the 17 other terminal 2 cleaning employees that worked her (morning) shift and she never observed cleaning employees, working her shift, that she did not recognize as regularly assigned terminal 2 employees. Adams never even observed any terminal 4 employees in the terminal 2 locker room. Adams, while on cross-examination, appeared somewhat confused about whether she had ever heard of terminal 4 employees being sent to work at terminal 2, but, explained she never worked the afternoon or evening shifts and added she never heard, or had seen, fellow workers from terminal 4 being sent by the Company to perform cleaning work at terminal 2. terminal 2 cleaning employee Migdalia Rivera, who knew some but not all of the 40 terminal 2 cleaning employees, had never observed anyone at terminal 2 who normally did not work there and could not recall seeing any terminal 4 employees working at terminal 2, nor had she seen any terminal 4 employees coming to terminal 2. Rivera knew of one Terminal 2 employee "Joquine" being sent to terminal 4 to work some overtime after working his regular terminal 2 shift.

It is clear there was essentially sporadic, if any, interchange between Terminal 2 and Terminal 4 Unit employees. More specifically, and as noted earlier, the parties stipulated "[Company] cleaning and facility maintenance employees at JFK [Airport] are regularly assigned to work either terminal 2 or terminal 4."

Turning now to the degree of separate direct supervision, or, stated another way, the degree, if any, of common day-to-day supervision. No evidence was presented showing any common day-to-day supervision of the Terminal 2 and Terminal 4 Unit employees. The parties stipulated direct level supervisors are regularly assigned to supervise employees in either terminal 2 or terminal 4 and "supervisors assigned to supervise employees in Terminal 2 do not regularly supervise employees working in Terminal 4, and supervisors assigned to supervise employees in Terminal 4 do not regularly supervise employees working in Terminal 2." I note that above the level of direct supervisors, terminal 2 and terminal 4 employees are jointly supervised by the Company's JFK Airport facility manager.

The absence of these two critical factors, employee interchanges and common day-to-day supervision, weighs heavily against, if it does not outright defeat, any claim of a lawful accretion. If a valid accretion is found it would mean that nearly one-half of the Combined Unit employees would not have been afforded an opportunity to express their views on, or decide, whom, if anyone, would be their chosen collective-bargaining representative.

I am not unmindful there are some factors that favor an accretion of the Terminal 2 Unit employees into the Terminal 4 Unit. For example, the working conditions, skills and

functions are similar. Terminal gate areas are the same whether the gates are located in one terminal or another. The geographic location of terminal 2 and terminal 4 is within an estimated 1-hour walking time and connected by shuttle and airport trains. This factor would favor accretion. It appears the Company has centralized management above the direct daily supervisory level and has centralized its administrative and labor relations control. Both favor accretion.

I find the factors that tend to favor an accretion are clearly outweighed by the two critical factors, namely, a lack of common day-to-day supervision and a lack of employee interchange.

Based on all above considerations, I conclude this case does not meet the Board's very restrictive standard for finding an accretion. The Company and/or Local 210 have not demonstrated that the Terminal 2 Unit employees share an overwhelming community of interest with the Terminal 4 Unit employees, nor, has the Company and/or Local 210 shown that the Terminal 2 Unit employees have little or no separate group identity, particularly, given that the Terminal 2 Unit employees were represented by a different union than represented the Terminal 4 Unit employees.

By granting recognition to Local 210 as the exclusive collective-bargaining representative of its Terminal 2 Unit employees, even though Local 210 did not represent a majority of the Terminal 2 Unit employees, the Company rendered unlawful assistance and support to a labor organization in violation of Section 8(a)(1) and (2) of the Act, and, I so find.

C. The Parties April 3 Collective Bargaining Agreement

The Company admits, and the parties stipulated, that on April 3, Local 210 and the Company mutually executed, and, have since that time maintained and enforced a collective-bargaining agreement, effective by its terms from March 1, 2014 to February 28, 2017, applicable to Terminal 2 Unit employees. The Parties further admit the collective-bargaining agreement, at subparagraph 10(b), contains a union-security clause. The execution and enforcement of the collective bargaining, including the union-security clause, occurred at a time when, as I have concluded above, Local 210 did not represent a majority of the JFK Delta Terminal 2 Unit employees.

The Board in *MV Public Transportation,* 356 NLRB No. 116 held that where, as is the case here, a union entered into, maintained, and enforced a collective-bargaining agreement containing a union-security clause at a time when such a union did not represent an uncoerced majority of the unit employees, the union is accepting unlawful assistance from the employer and the union violates Section 8(b)(1)(A) of the Act. The Board also held that where a union enters into and maintains and enforces a collective-bargaining agreement with a union-security clause at a time when it does not represent an uncoerced majority of employees, the union also violates Section 8(b)(2) of the Act.

It is alleged, and I also find, that by the applicable law and facts here, the Company encouraged Terminal 2 Unit employees to join and assist Local 210, and as such, it has been

discriminating in regard to the hire or tenure or terms or conditions of its Terminal 2 Unit employees, thereby encouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

Local 210, by executing on April 3 and thereafter, maintaining and enforcing its collective-bargaining agreement with the Company, containing a union-security clause applicable to Terminal 2 Unit employees, at a time when it did not represent a majority of the Terminal 2 Unit employees, Local 210 has been restraining and coercing Terminal 2 Unit employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) and 8(b)(2) of the Act, and, I so find.

D. Threats of Loss of Employment

It is alleged that by a letter dated July 8, Local 210 Officer Miranda, at a time when Local 210 was not the lawfully recognized exclusive collective bargaining representative, threatened Terminal 2 Unit employees with loss of employment unless they executed dues check-off authorizations or otherwise joined or assisted Local 210.

The evidence clearly establishes Charging Party Adams, as well as Terminal 2 Unit employee Aragon received Local 210 Officer Miranda's July 8 letter. In the letter Adams was informed that her employment was covered by a collective-bargaining agreement containing a union security clause that required all employees covered by the agreement to become and remain union members in good standing with Local 210 or pay initiation fees and periodic dues and assessments as required by Local 210. Adams was further informed, in Miranda's letter, that any employee who failed to acquire, or maintain, membership in Local 210 as provided for in the collective-bargaining agreement, or to pay initiation fees or periodic dues, shall be terminated 72 hours after the Company has received written notice from Local 210 certifying that membership has been, and continues to be, offered to such employee on the same basis as all other members and the employee has had notice and opportunity to make all dues or initiation fee payments. Adams was informed in the letter she had been given numerous communications of her failure to pay dues owed to Local 210, or, make arrangements to have the dues deducted from her pay and remitted directly from the Company to Local 210. Local 210 Officer Miranda advised Charging Party Adams if she had not paid her dues delinquency by July 18, Local 210 would notify the Company of her failure to abide by the collective-bargaining agreement and, Local 210 would request her employment with the Company be terminated.

Adams was never a member of Local 210. Adams was not covered by the parties' collective-bargaining agreement because Local 210 was never the lawfully recognized exclusive collective-bargaining representative of the Terminal 2 Unit employees. Thus, Local 210 could not lawfully require Adams to pay dues or threaten to have Adams' employment with the Company terminated because the parties' collective-bargaining agreement was invalid and could not be applied to JFK Delta Terminal 2 Unit employees such as Charging Party Adams.

Local 210's July 8 letter to Adams contained a clear threat of a loss of employment for Adams with the Company and violates Section 8(b)(1)(A) of the Act, and, I so find.

It is alleged that on or about July 24, Local 210 Union Officer Miranda or Business Agent Merced at JFK Delta Terminal 2 threatened employees with loss of employment unless they executed dues check-off authorizations or otherwise joined or assisted Local 210 and threatened employees with unspecified reprisals because employees filed charges with the Board.

Cleaning Employee Migdalia Rivera credibly testified that at a July 24 meeting with Local 210 Business Agent Merced on the first floor of Terminal 2 attended by employee Ana Aragon and others, Merced told employees "the Company, ISS, is gonna fire people that do not sign in for [Local] 210." Rivera testified Merced also mentioned that someone in the group was going to the "Labor Board" and that was "unlegal[illegal]." Employee Aragon identified other cleaning employees present at Merced's July 24 meeting as "Joquine", "Joe" and "Migdalia" [Rivera]. According to Aragon, Local 210 Business Agent Merced told the employees they had a union, Local 210, and the employees needed to sign papers so they could take money from their pay checks for Local 210. Aragon asked Merced how the employees would know if they had a union if they did not vote for one. Aragon said "they" were upset because we were asking questions why and Local 210 Business Agent Merced told them, "we have to sign; otherwise, we were going to get fired, the ones who were not going to sign." Cleaning Employee Aragon testified she and Migdalia Rivera, thereafter, had a second meeting in the lunchroom at Terminal 2 with Local 210 Business Agent Merced. Merced told she and Rivera, "We have to sign . . . so they could take the money for us" and added that if we did not sign they were going to fire us one-by-one.

It is clear Local 210 Business Agent Merced, on/or about July 24, threatened terminal 2 cleaning employees with a loss of employment with the Company if they did not sign the necessary papers for Union dues to be deducted from their wages by the Company and remitted to Local 210. The collective-bargaining agreement containing the dues requirements was invalid and not applicable to the Terminal 2 cleaning employees. Simply stated, Local 210 had no valid basis to demand, at the expense of the cleaning employees' employment, they authorize dues from their wages for Local 210. These threats of loss of employment by Local 210's representative violates Section 8(b)(1)(A) of the Act, and I so find.

The Board in *Teamsters, Local 391*, 357 NLRB No. 187, slip op. at 1–2 (2012) held:

> Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of rights protected by the Act. Those rights include the right to access the Board's processes. As the Supreme Court has recognized, because the Board cannot act to prevent and remedy unfair labor practices without a filed charge, the Act embodies a policy of "keeping people completely free from coercion against making complaints to the Board"[2] "Any coercion used to discourage, retard, or defeat that access," the Court added, "is beyond the legitimate interests of a labor

organization" [3] Accordingly, the Board has found union threats against employees for filing Board charges unlawful under Section 8(b)(1)(A). [4]

2 *NLRB v Marine & Shipbuilding Workers Local 22, 391 U.S. 418, 424 (1968) (internal quotations omitted).*
3 *Id.*
4 *E.G., Oil Workers Local 2-947 (Cotter Corp).* 270 NLRB 131 (1984).

The Board in *Teamsters Local 391* noted the applicable test, an objective one, is whether a remark can be reasonably interpreted by an employee as a threat. And, that the central function of the Act, in this type setting, of keeping individuals completely free from coercion when making complaints to the Board, Section 8(b)(1)(A) of the Act will be found to extend beyond explicit calls for reprisals against charge filers to statements a reasonable employee would understand to imply as much.

Telling employees, in the context here, that going to the Board with their concerns was illegal, indicates to the employees they have done something wrong, and leaves them with the clear impression Local 210 will take action against them for going to the Board and this impeding access to the Board's process violates the Section 8(b)(1)(A) Act, and, I so find.

CONCLUSIONS OF LAW

1. The Company, ISS Facility Services, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Local 210, International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.

3. By, on/or about December 18, 2013, granting recognition to Local 210 as the exclusive collective-bargaining representative of employees engaged in cleaning, maintenance, project and janitorial services at JFK Delta terminal 2, even though Local 210 did not represent a majority of the Terminal 2 Unit employees, the Company violated Section 8(a)(1) and (2) of the Act.

4. By, on/or about April 3, 2014, executing, maintaining, and enforcing a collective-bargaining agreement with Local 210 for the JFK Delta Terminal 2 Unit employees effective from March 1, 2014 to February 28, 2017 containing a union-security clause, even though Local 210 did not represent a majority of the JFK Delta Terminal 2 Unit employees, the Company has encouraged Terminal 2 Unit employees to join and assist Local 210 and in so doing, the Company has been discriminating in regard to the hire, or tenure ,or terms, or conditions of employment of its JFK Delta Terminal 2 Unit employees, thereby, encouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

5. By, on/or about April 3, 2014, executing, maintaining, and enforcing a collective-bargaining agreement with the Company for the JFK Delta Terminal 2 Unit employees effective from March 1, 2014 to February 28, 2017, containing a union-security clause even though Local 210 did not represent a majority of the JFK Delta Terminal 2 Unit

employees, Local 210 has encouraged Terminal 2 Unit employees to join or assist Local 210; thereby, restraining and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act and in violation of Section 8(b)(1)(A) of the Act.

6. By, on/or about July 24, threatening JFK Delta Terminal 2 Unit employees with loss of employment unless the executed dues checkoff authorizations, or otherwise joined, or assisted Local 210 and, by threatening Terminal 2 Unit employees with unspecified reprisals because employees filed charges with the Board; Local 210 restrained and coerced employees in the exercise of their right guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

REMEDY

Having found the Company and Union have both engaged in certain unfair labor practices, I find both must be ordered to cease and desist, and to take certain affirmative action designed to effectuate the policies of the Act.

Having found the Company unlawfully recognized, and then executed a collective-bargaining agreement, effective form March 1, 2014 until February 28, 2017, with Local 210 for its JFK Delta Terminal 2 Unit employees; I recommend the Company be ordered to, immediately, withdraw and withhold all recognition from Local 210 as the collective-bargaining representative of the JFK Delta Terminal 2 Unit employees. I also recommend the Company be ordered not to apply to the Terminal 2 Unit employees the terms of the March 1, 2014 to February 28, 2017 collective-bargaining agreement executed by the Company and Local 210 for the Terminal 2 Unit employees, including the union-security provisions contained in the agreement. I recommend the Company, together with Local 210, jointly and severally reimburse all present and former JFK Delta Terminal 2 Unit employees for all initiation fees and dues paid by them or withheld from them pursuant to the dues checkoff and union security provisions in the March 1, 2014 to February 28, 2017 collective-bargaining agreement, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Additionally, I recommend the Company, be ordered, within 14 days after service by the Region, to post an appropriate "Notice to Employees" in order that employees may be apprised of their rights under the Act and the Company's obligation to remedy its unfair labor practices.

Having found Local 210 has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found Local 210 unlawfully executed, maintained, and enforced a collective-bargaining agreement with the Company effective from March 1, 2014 until February 28, 2017, which contained a union-security clause, I recommend Local 210 be ordered not to apply the terms of the March 1, 2014 to February 28, 2017, collective-bargaining agreement to the Terminal 2 Unit employees, including the union-security provisions contained in the

agreement. I recommend Local 210, together with the Company, jointly and severally, reimburse all present and former JFK Delta Terminal 2 Unit employees for all initiation fees and dues paid by them or withheld from them pursuant to the dues checkoff and union security provisions in the March 1, 2014 to February 28, 2017, collective-bargaining agreement with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Additionally, I recommend Local 210 be ordered, within 14 days after service by the Region, to post an appropriate "Notice to Members" in order that members and employees may be appraised of their rights under the Act, and Local 210's obligation to remedy its unfair labor practices.

ORDER

The Company, ISS Facility Services, Inc., Jamaica, New York, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Recognizing Local 210 as the exclusive collective-bargaining representative of the JFK Delta Terminal 2 Unit employees because Local 210 does not represent a majority of those employees.

(b) Applying the terms of our March 1, 2014 to February 28, 2017 collective-bargaining agreement with Local 210, including; the deduction of initiation fees and union dues; the provisions on union security; and, the dues deductions clauses contained therein, to the JFK Delta Terminal 2 Unit employees because Local 210 does not represent a majority of those employees.

(c) Encouraging the JFK Delta Terminal 2 Unit employees to join or assist Local 210.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

(a) Withdraw recognition of Local 210 as the exclusive representative of the JFK Delta Terminal 2 Unit employees.

(b) Disavow and refrain from applying to the JFK Delta Terminal 2 Unit employees the terms of our March 1, 2014 to February 28, 2017 collective-bargaining agreement with Local 210.

(c) Jointly and severally with Local 210 reimburse with interest, all present and former JFK Delta Terminal 2 Unit employees for all initiation fees, and dues paid by them or withheld from their pay pursuant to the dues checkoff provisions of our March 1, 2014 collective-bargaining agreement with Local 210.

(d) Within 14 days after service by the Region, post at our JFK Delta terminal 2 location, copies of the notices marked "Appendix A,"[2] on forms provided by the Regional Director for Region 29, after being singed by the Company's authorized representative, shall be posted by the Company immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as email, posting on the intranet or an internet site, or other electronic means, if the Company customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Company has gone out of business or closed the facilities involved here, the Company shall duplicate and mail, at its own expense, a copy of the notice to all current employees an former employees employed by the Company at any time since March 1.

(e) Notify the Regional Director of Region 29 in writing within 20 days from the date of this Order what steps the Company has taken to comply.

The Union, Local 210, International Brotherhood of Teamsters, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees with loss of employment unless they executed dues, authorizations, or otherwise joined, or assisted Local 210.

(b) Threatening JFK Delta Terminal 2 Unit employees with unspecified reprisals because they filed charges with the National Labor Relations Board.

(c) Acting as the exclusive collective-bargaining representative of the employees in the JFK Delta Terminal 2 Unit unless, and until, Local 210 has demonstrated our majority status among the Terminal 2 Unit employees, and have been certified by the National Labor Relations Board.

(d) Applying the terms of our March 1, 2014 to February 28, 2017 contract, specifically including the union security and dues checkoff provisions, with the Company for employees in the JFK Delta Terminal 2 Unit.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

[2] If this order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(a) Inform all JFK Delta Terminal 2 Unit employees that Local 210 is not their exclusive bargaining representative and can not be unless, and until, Local 210 establishes or demonstrates its majority status among the JFK Delta Terminal 2 Unit employees.

(b) Jointly and severally with the Company reimburse with interest, all present and former JFK Delta Terminal 2 Unit employees for all initiation fees and dues paid by them, or withheld from their pay pursuant to the dues checkoff provisions of the March 1, 2014 to February 28, 2017 collective-bargaining agreement with the Company.

(c) Within 14 days after service by the Region, post at its business office and other places where notices to members are customarily posted, copies of the notice marked "Appendix B"[3] copies of the notice, on forms provided by the Regional Director for Region 29 after being signed by the Local 210's authorized representative, shall be posted by Local 210 immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Local 210 to ensure that the notices are not altered, defaced, or covered by any other material. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as email, posting on the intranet or an internet site, or other electronic means, if Local 210 customarily communicates with its members by such means.

(d) Notify the Regional Director of Region 29 in writing within 20 days from the date of this Order what steps Local 210 has taken to comply.

Dated, Washington, D.C. March 23, 2015

William N. Cates
Administrative Law Judge

[3] If this order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT recognize or contract with Local 210, International Brotherhood of Teamsters as the bargaining representative of our cleaning employees at JFK Terminal 2 Unit unless, and until, Local 210 has been certified as the representative of Terminal 2 Unit employees by the National Labor Relations Board.

WE WILL NOT apply the terms of our March 1, 2014 contract with Local 210 to our Terminal 2 Unit Employees.

WE WILL NOT direct or urge Terminal 2 Unit employees, as a condition of employment, to sign cards authorizing Local 210 to represent them or have dues for Local 210 deducted from their salaries.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL withdraw and withhold all recognition from Local 210 as the collective-bargaining representative of our Terminal 2 Unit employees.

WE WILL, jointly and severally with Local 210, reimburse, with interest, all of our present and former Terminal 2 Unit employees for all initiation fees and dues paid by them or withheld from them pursuant to the dues check-off and union-security clauses in the March 1, 2014 contract with Local 210.

ISS FACILITY SERVICE, INC.
(Employer)

Dated: _____ **By:** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Two Metro Tech Center Ste. 5100; 5 FL, Brooklyn, NY 11201-3838
(718) 330-7713, Hours: 8:15 a.m. to 4:45 p.m. (E.T.)

The Administrative Law Judge's decision can be found at www.nlrb./case/29-CA-133335 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (718) 330-2862.

APPENDIX B

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT act as the exclusive bargaining representative of the cleaning employees at JFK Delta Terminal 2 Unit unless, and until, we have demonstrated our majority status among Terminal 2 Unit employees and have been certified by the National Labor Relations Board.

WE WILL NOT apply the terms of our March 1, 2014 contract with ISS Facility Services, Inc. to the JFK Delta Terminal 2 Unit employees.

WE WILL NOT threaten to have you fired if you do not sign cards authorizing us to represent you, or, if you decline to have dues and/or fees deducted from your paycheck and remitted to us.

WE WILL NOT threaten you with unspecified reprisals because you file charges with the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL, jointly and severally with ISS Facility Services, Inc., reimburse, with interest, all present and former Terminal 2 Unit employees for all initiation fees and dues paid by them or withheld from them pursuant to the dues check-off and union security clauses in our March 1, 2014 contract with ISS Facility Services, Inc.

LOCAL 210, INERNATIONAL
BROTHERHOOD OF TEAMSTERS
(Union)

Dated: _____ **By:** _____
(Representative) **(Title)**

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